

To his Grace His Majesties High Commissioner, and Honourable Estates of Parliament.

*The Petition of Patrick Porterfield of Comiston, And other
Heritors near Adjacent to the Town of Edinburgh,*

Humbly Sheweth,

THAT there being an ACT presented in Parliament upon Friday the fourteenth day of June instant, by the Magistrates of Edinburgh, Making mention, That the said Magistrates had been at Vast Expences in purchasing Toddes well, and some other Springs, And in making of Lead-Pipes, Conduites, and Cisterns, for conveying in the same to Edinburgh, And that the said Fountains do not furnish sufficient Water for the Numerous Inhabitants of the said City, and others thereto resorting; And that in the time of Drought or Frosts, the same do furnish little or no Water. And it being necessary for perfecting their Design, That Comiston and all other adjacent Heritors be obliged to sell and dispose to the said Magistrates, such Wells and Fountains as may be necessary for the use of the Burgh, Together with the Ground needfull, lying about the said Wells, for preserving the same, And for laying of the Pipes and Conduites, for bringing in of the said Water, and Cisterns already made. Therefore His Majestie, &c. did empower the Lords of Privy Council to call before them the Laird of Comiston, and any other Heritors that may be concerned, and whether they appear or not, To cause Appraise any Wells or Springs belonging to Comiston, or the said other Heritors, as might be usual for the Town of Edinburgh, with the Ground next adjacent thereto; And upon their con-
sideration of the summes, at which the same should happen to be appraise, To assess Comiston and all the other Heritors and Superiors, To make Returnation thereof in the Towns Favers, To the effect they may hold the same immediately of the King; And that Comiston and the other Heritors may be discharged to Digg, Hew, or set down any Pits, Holes, or sinks, near to the said Wells.

This ACT was appointed to ly on the Table till Thursday, the 20th instant, To the effect that Comiston and the other Heritors concerned, may give in their Objections against the same; And seeing the said ACT is principally intended against Comiston, He Humbly craves Liberty to Represent to my Lord Commissioner, his Grace, and the Honourable Estates of Parliament, The Severe and Hard measures he hath already mett with from the Town of Edinburgh, And what further prejudice he is justly apprehensive of from them, in case the foresaid ACT should pass in their Favers.

Comistons Mother having (in his Minority) dispensed Toddes well, and six Ells round the same, to the Town of Edinburgh, for the summe of 1000 meiks Scots al-
ienantly, to be holden Few of her self, and her Successours, for yearly payment of four pounds Scots, She took them expressly obliged to Repair all the Damage she should sustain by the breaking her ground to lay in their Pipes, &c. And she was so apprehensive of their further Encroachments, That in case the said Toddes well were not sufficient to serve the Town with Water, They should be obliged to supply the same from the upper Springs in Pentland hills; And she was truly obliged to allow them liberty to convey their pipes to Todds well.

Albeit the Lady Comiston, nor her Son after he succeeded in her Right, did never violate any Article of that Contract in the least; Yet the Town of Edinburgh did use many Arts of Oppression against Comiston, *imo*, By casting up his ground, and leaving



leaving many Firs and Spruce open therin, by which many of the Beastal did perish in the Winter. 2d. They did by open Bangarie and Oppression take in other two Wells, to which they can pretend no imaginary Right, and builded houses over the laid Wells. 3d. When Comisoun came with a Notar and Wines. les, and made civil Interruption against the laid unjust Encroachment and Oppression, They did pursue him before the Privy Council as guilty of a Ryot; And did thereby put him to very great Trouble and Expences, albeit he was Affoizied from that complaint by the Justice of the Privy Council. 4d. They still retain the laid two Wells so unwarrantably robbed by Them, and thereby Comisoun has neither a wholesome Spring for the use of his own Family, Nor any convenient watering place for his Cattel: And after Comisoun was Affoizied from their complaint before the Privy Council, One of the Members of the Town Council of Edinburgh, did in presence of the Magistrates themselves, Threaten Comisoun to his Face, By laying, That if he offered to Debate with them, they should ruin him entirely, as they formerly had done the Laird of Restalrig.

The Laird of Comisoun hath lately found out upon his ground both a Lime-Stone-Quarie, with a good Coal, and a very good Copper-spring. And having set down a Sink for his Coal, And a quantite of his Copper being alreadie melted, and found sufficient; And he being in Terms of a Bargain with some Englishmen for his Copper, by which he expects more benefit in time coming than three times the Value of his yearly Rent will amount to. 1 his Act is levelled and contrived principally against Comisoun to frustrate the well grounded hopes he hath of his Copper, Coal, and Lime-stone: And therefore he humbly expectes from the Justice of the High Court of Parliament, That no such Act can pass in Favours of the Town of Edinburgh, to his so great and evident prejudice. Because, 1m. Comisouns Wells being his uncontested Property, And the Inheritance of his Fathers; No Law can oblige him to sell, or Dispose them to any other person. Especially, where his retaining and refusing to dispose the same, cannot be pretended to be done, In Emulation, But only for the Conveniencie and necessitie Accommodation, of his own Family and Lands, it being impossible for him to Live, or keep the Lands, Tenants-stand without those Wells. And he hath, *de facto*, been necessitate to keep the mains of Comisoun in his own hand, Because, no Tenant will take it from him, for fear of the Town of Edinburghs Encroachment and Oppression. For seeing they used Comisoun himself, in manner above represented, What could a poor Tenant expect to meet with from them. 2d. As it is an uncontested principle, That Water is the Mother of Coals, and all other Minerals; So Coals and all other Minerals are found near to Springs of Water, And seeing that Coals and Copper cannot be wrought without Sinks and Levels, And that the letting down and working thereof doth frequently Drain and take away the Water from these Springs; The allowing of these Springs to the Town of Edinburgh; And discharging to set down a Sink near to these Wells, imports no less than to discharge Comisoun from working of his Coal and Copper-Mines. The Town of Edinburgh may as well crave, That Comisoun may be Forfeited (albeit he be guilty of no Crime, and that his Forfeiture may be gifted to the Town of Edinburgh.)

3d. If the said Act should be past, Comisoun should be absolutely debarred from inclosing his Ground by Ditching, Inclosing, and Planting; Because, all Inclosures are incles where there is no Water; And where Cap. Comisoun have Water when all his Springs and Wells are by Act of Parliament Appropriated and Declared to belong to the Town of Edinburgh. 4d. By this Act, as it is conceived, Neither Comisoun nor any of his Tenants can have as much as Water, for their own Families, or the use of his Cattel, without a Licence from the Town of Edinburgh: And they might pretend to bring their Water through his own Closes, Dwelling-houses, or Gardens, or through the Tenants Dwelling-houses, or Corn-yards, &c. And what an intolerable Servitude would this prove upon all Comisoun Estate? And whether or not the same might in a short time lay the Estate in utter waste, if settled in such peron hands as the Town of Edinburgh is known to be, and whether or not, any rational man, would pay an adequate price for lands affected with such an intolerable servitude

in favours of the Town, Is referred to the consideration of this high and Honourable Court. 5to. The former grounds are likewise propounded for all the other Adjacent Heritors, Because if the said Act were past, they would be liable to the Servitude and Damages above represented, and the Town of Edinburgh would thereby have the same pretence to insult over them, and oppress their Interest, and keep them from improvement thereof, which they crave by the said Act against the Laird of Comiston. 6to. To convince your Grace, and the Honourable Estates of Parliament, That the Town of Edinburghs true design in this affair, is only to fix an intolerable Servitude upon Comiston, and the bail other Adjacent Heritors, and to hinder them from the lawful Improvements of their own Interests, There are more Springs upon Pentland Hills, a little above Toddis well, and which may easily be brought down, and conveyed to that Toddis well, without doing the least prejudice to any Mans Property, than will serve the Town of Edinburgh three times over: And Comiston is expressly obliged by his Mothers Contract, to allow them Liberty to convey the Springs from Pentland hills to Toddis well; So that seeing the Town may be abundantly served that way. It were above all measure hard to allow the Town of Edinburgh such an intolerable Servitude upon Comiston and the other Heritors, so much to their prejudice, Especially, seeing the Sinks let down, and to be set down by Comiston, and other Improvements intended by him, are at such a distance from Toddis well, and from the Springs which they may have from Pentland hills, That they neither are, nor ever can be prejudged thereby in the least.

May it therefore please your Grace, and the Honourable Estates of Parliament, To consider the Premisses, and the great Prejudice and Servitude, if not the total ruine of our Fortunes, designed against us by the Town of Edinburgh, in the foresaid Act, and to reject the same as unjust and unreasonable.

And your Petitioners shall ever Pray, &c.